In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 31

INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated association; CHARLES TRUAN, individually and as International Representative thereof; THOMAS E. McSHANE, and A. C. McGRAW, as International Representatives thereof; INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE No. 68, an unincorporated association; ROBERT ROLLER, as President of said Local Lodge; REESE CONTE, as Secretary of said Local Lodge; EDWARD PECK, as Treasurer of said Local Lodge; FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE and FIFTH DOE,

Petitioners,

vs.

MARCOS GONZALES,

Respondent.

BRIEF FOR RESPONDENT.

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OPINIONS BELOW.

The opinion of the California District Court of Appeal, First Appellate District, is reported at 142 C.A. 2d 207, 298 P. 2d 92 (R. 117-132). The Memorandum of Decision of the Superior Court (the trial court) is not reported. It appears at page 16 of the record.

JURISDICTION.

The judgment of the California District Court of Appeal, First Appellate District, was entered on June 12, 1956 (R. 117). A timely petition for hearing was filed in the California Supreme Court and denied on August 8, 1956. A petition for a writ of certiorari was filed on October 31, 1956 and granted on January 14, 1957 (R. 146). 352 U.S. 966. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED.

Petitioners assert that they were guilty of an unfair labor practice and base their assertion that they are not liable in damages on the assumption that there was such a practice. Respondent argues that there is no evidence of an unfair labor practice, but a record of a state court sitting in equity dealing with a breach of the contract between an unincorporated association and one of its members. The questions presented depend upon which version of the facts is accepted.

On respondent's version of the facts, the question is:

1. Whether a state equity court is ousted by the National Labor Relations Act of its jurisdiction to afford complete relief to one illegally expelled from membership in an unincorporated association by the fact that (1) the association is a trade union, or (2) the fact that part of the measure of damages under state law is the amount of wages lost by the expelled member.

On petitioners' version, it is:

2. Whether a state court may award damages measured in part by lost wages and in part by mental distress to an ousted member of a trade union, where the trade union has caused employers to discriminate against the ousted member, but where (1) no unfair labor practice is pleaded; (2) no evidence of the unfair labor practice is relevant under applicable state law and none is therefore received; and (3) the court's award does not attempt to regulate conduct which constitutes an unfair labor practice, but only conduct excluded by the federal statute from the jurisdiction of the Labor Board.

STATUTES INVOLVED.

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 141 *et seq.*) are set forth in Appendix A, *infra.*

STATEMENT OF THE CASE.

In 1946, the Grand Lodge of the International Association of Machinists revoked the autonomy of Local Lodge No. 68, a San Francisco local to which the respondent, Marcos Gonzales, belonged. It appointed one Charles Truax as International Representative to control the affairs of the local (R. 39). As a member of the Policy Committee it was respondent's duty to examine the qualifications of candidates for membership in the local lodge and to make recommendations for or against their admission to membership (R. 41). He examined one Kenneth Nelson and recommended that his application be rejected. This recommendation was disregarded on Truax's orders and Nelson was admitted (R. 41-42). Thereafter, Gonzales was physically beaten by Kenneth Nelson (R. 43). Gonzales filed an action charging battery in the Superior Court in San Francisco against Nelson and Truax (R. 23). Gonzales recovered a judgment of $10,000 against Nelson (R. 23). A judgment of nonsuit was returned in favor of Truax (R. 3).

Thereafter, on June 21, 1950, Truax filed in the local lodge charges that Gonzales had violated the constitution and by-laws of the local and Grand lodges by making false and malicious statements reflecting upon the private and public conduct of Truax as an officer of the Grand Lodge. The claimed "false and malicious statements" were the allegations contained in the complaint for damages mentioned above (R. 23). On July 7, 1950, a purported trial of Gonzales was held by the union. The trial committee reported that Gonzales was

guilty as charged and recommended that he be expelled from both the Grand Lodge and the local lodge (R. 23). The members present at the meeting where this recommendation was made voted 43-31 against the recommendation (R. 23-24).

In violation of the constitution and by-laws of the lodges (R. 26) the local lodge at the next meeting purported to reconsider and rescind the action taken at the previous meeting and then again voted on the recommendation of the trial committee. Although the result did not constitute the two-thirds majority required under the by-laws to sustain a recommendation of expulsion (R. 26) the local lodge ruled that Gonzales had been expelled (R. 50).

Gonzales appealed the purported expulsion to the president of the Grand Lodge in accordance with the rules of the order and the president purported to set aside Gonzales' expulsion but imposed upon him a penalty of $500 fine and the furnishing of a written apology to Truax (R. 24). This action was illegal under the mandatory provisions of the constitution and by-laws of the lodges (R. 27). The rules of the lodge required compliance with the president's order before any further appeal could be taken. Gonzales refused to comply. The trial court held that his failure to exhaust his remedies within the lodge was excused by the illusory nature of the further appeal (R. 27).

Thereafter Gonzales was unable to obtain dispatch from the union hiring hall (R. 57) although non-union men were regularly dispatched from that hall (R. 97-98). He was also unable to obtain work directly from

employers (R. 58-62). The petitioner objected to evidence about the reason for the refusal of employers to hire respondent, and the court sustained the objection (R. 60-61). Counsel for petitioner stated as its theory that ". . . there may have been reasons why certain of these employers would not want to employ Mr. Gonzales. I am not stating that they did exist, but for example, in some of the employment that he had, he had the misfortune to become injured. Now, conceivably that would be one of the grounds for refusing him employment. . . ." (R. 61). The union did not give respondent any of the assistance in obtaining employment that he would have been entitled to as a union member. As counsel for petitioner stated it "The crux is concededly, he is being denied the advantages of the union" (R. 97).

Gonzales then filed a charge with the National Labor Relations Board, against the local lodge.[1] The Board did not issue a complaint but advised him to get a lawyer. He did so, and thereafter withdrew the charges (R. 65).

Respondent then filed this action in the Superior Court, seeking a writ of mandate requiring the petitioners to restore him to full membership without the payment of any fine or the statement of any apology to Truax, and for damages suffered by him as the result of his unlawful expulsion from the union (R. 7).

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[1]Evidence on this point was admitted to show respondent's attitude toward petitioners, and was held irrelevant for any other purpose (R. 68-69).

The petition for writ of mandate did not charge any unfair labor practice (R. 1-7). The answer (R. 11-13) did not allege any unfair labor practice nor raise any question about the jurisdiction of the court. The answer urged that no relief was available to Gonzales in equity because he had a plain, speedy and adequate remedy at law under the provision of § 8 (b) (1) and § 8 (b) (2) of the National Labor Relations Act (R. 13). It denied that respondent had been expelled (R. 11) and pleaded respondent's failure to exhaust his remedies within the lodge (R. 12-13).

At the trial no evidence of an unfair labor practice was offered. The case was tried by both sides on the theory that this was a matter of private contract right. No evidence was offered to show that respondent's former employers were engaged in interstate commerce.

The trial court found that the purported expulsion of respondent was illegal and void, and ordered a judgment against the Grand and local lodges, providing (1) that a writ of mandate should issue requiring Gonzales' reinstatement to membership, and (2) that damages be paid to respondent in the sum of $6,800 for lost wages and $2,500 for humiliation, anxiety and degradation (R. 29-30).

SUMMARY OF ARGUMENT.

1. *There is no unfair labor practice in this case.* None is pleaded, no evidence of any such conduct was offered or received, and under state law no such evi-

dence was material or relevant. This case dealt solely with illegal expulsion of respondent from a trade union.

2. *Assuming there was an unfair labor practice in fact though no evidence of it was offered, the state court did not offer to regulate it.* The pleadings raised no question except those properly cognizable under state law. The court could not properly refuse jurisdiction on those pleadings.

The mere presence of an unfair labor practice does not mean exclusive federal jurisdiction. *United Construction Workers v. Laburnum,* 347 U.S. 656. There may be, and there was in this case, an area where state law properly controls. That is the area neither protected nor prohibited by the National Labor Relations Act.

The state court properly determined its jurisdiction without requiring that the Board first determine whether the Board had jurisdiction. None of the indicia of exclusive federal jurisdiction were present. *Weber v. Anheuser-Busch,* 348 U.S. 468.

3. *The state court had jurisdiction to afford complete relief.* No other tribunal had. The law favors the granting of complete relief, and has sanctioned such relief even where partial relief was possible before the National Labor Relations Board. *Syres v. International Oil Workers Union,* 350 U.S. 892.

4. *The decree below does not contravene federal policy in the regulation of labor disputes.* It dealt with illegal expulsion from an association, an area excluded

from the National Labor Relations Act. The fact that it awarded damages does not mean it invaded the Board's jurisdiction. The decision of the California court cannot produce any of the evils which preemption is designed to prevent.

ARGUMENT.

1. THERE IS NO UNFAIR LABOR PRACTICE IN THIS CASE.

The petitioners assume throughout their argument that respondent sought and obtained relief against an unfair labor practice. The assumption is unsupported by the facts. There is first of all no *allegation* in the petition for writ of mandate that any unfair labor practice was committed. Second, there is no *evidence* of any violations of the Act. Third, no such evidence was *relevant* under state law.

A. No unfair labor practice was pleaded.

The petition for writ of mandate in this case was concerned with respondent's illegal expulsion from an unincorporated association. He sought a writ of mandate to compel his reinstatement. Under California law such an expulsion is a breach of the contract between the organization and its members. *Harris v. National Union of Marine Cooks and Stewards,* 98 Cal. App. 2d 733, at 736. The respondent claimed that he had suffered monetary damages, and anxiety and other mental distress, and asked that the court award him appropriate damages for the breach. This was respondent's theory in pleading and also in proving his case.

B. No evidence of unfair labor practices was offered.

Respondent testified that he had been unable to obtain employment since his purported expulsion from the union. His loss as a proximate result of the breach of contract included loss of his right as a union member to be dispatched to work from the union hall (R. 93). He had attempted to obtain employment directly from some of his former employers but these efforts had been unsuccessful (R. 58-62). Neither respondent nor petitioners offered any evidence, however, that employers or union discriminated against Gonzales in violation of the National Labor Relations Act.

Petitioners recognized during the trial of this case that respondent's failure to obtain employment was not the result of illegal discrimination by employers on their own motion or because of coercion by the lodge. When respondent attempted to testify to the statements made by one employer in response to respondent's request for work, the petitioners objected. The following colloquy occurred between Mr. Kennedy, counsel for the petitioners, and the court:

> "Mr. Kennedy. That is what I was trying to raise, as a matter here, your Honor, the history will show that there may well have been—and I can't state one way or another—that there may have been reasons why certain of these employers would not want to employ Mr. Gonzales. I am not stating that they did exist, but for example, in some of the employment that he had, he had the misfortune to become injured. Now conceivably that would be one of the grounds for refusing him

employment. What we are doing here, is, we are taking Mr. Gonzales' version of a third party's statement, and the only purpose that they had in not giving him employment; and we don't have that party here, and I think that that is the danger of this type of testimony so far as the Respondents are concerned.

The Court. I think your objection is well taken so far as that is concerned, but I was trying to narrow the issues down. You are making some point of the fact that even if he had been a member, there was no employment available" (R. 61).

There is no evidence in the record that the union caused or attempted to cause employers not to hire respondent. The evidence showed only that the union refused to dispatch the respondent (R. 57). A witness for the petitioners, Mr. O'Hara, the dispatcher, testified that he could not dispatch Gonzales either as a member or as a non-member of the union to any employment (R. 98). Both union and non-union men, however, were dispatched to jobs from the union hall during the period in question here (R. 98-99). As a union member, respondent had a right to be dispatched from the union hall, and on well recognized trade union principles a right to help from the union in obtaining employment. If the employer refused him employment on some ground which the union did not recognize as good cause, it could and should have given him assistance, if he was a member in good standing. Since the petitioners did not regard him as such a member, it gave him no assistance. As counsel for petitioners put it, "The crux is concededly, he is being denied the advantages of the union" (R. 97).

Petitioners now seek to change theories, by an intimation made in the appellate courts that they violated the National Labor Relations Act. Thus they hope to supply ground for an inference that there was an unfair labor practice here. First of all, one may suspect as self-serving a confession made when its only consequence is to save the confessor's pocketbook and deprive the victim of compensation for the confessor's wrongful act. Second, it should be recalled that this Court and all others under our Constitution must decide cases on evidence properly offered and received. Third, since there was no collective bargaining agreement between petitioners and the employers for five months after respondent's illegal expulsion (R. 73), the theory advanced *(by the petitioners)* in the trial court is more substantial than the one now offered to explain the employers' refusal to hire Gonzales.

C. Evidence of unfair labor practices was irrelevant under state law.

Not only was there no evidence offered by petitioners to establish an unfair labor practice, but such evidence would have been excluded as irrelevant under state law. This is illustrated by the trial court's ruling on evidence that respondent filed a charge against the union with the National Labor Relations Board. That evidence was allowed for one purpose only—to show any attitude or disposition Gonzales might have had toward the petitioners that would explain or excuse his ouster. In fact, the colloquy which occurred around this subject illustrates that Court and both counsel were agreed that any unfair labor practice aspect of the facts was immaterial:

Mr. Kennedy. I'd like to offer the copies of the charge of withdrawal [of the charge of an unfair labor practice], and the reason that I am offering them is purely for the convenience of referring later to particular sections, in the event you want to argue. The contents, I believe, is just the formal documents of the charging of the withdrawal, but it contains certain sections of the National Labor Relations Act that I will probably refer to later.

Mr. McMurray. I will object to it on the grounds that it is immaterial, your Honor.

The only way I can see that the question of the Labor Board has any materiality is if the argument is advanced, and I take it that it will be——

The Court. I allowed that questioning on this theory:

To show any bias or prejudice of this witness on cross-examination. I don't think the National Labor Relations Board hearing or the matters alleged have anything to do with this hearing. *It was merely for that reason to show any possible course of conduct that might throw any light upon this man's attitude towards the union.*

If it had been objected to, I would have given the reasons, but I just allowed it as a preliminary question, and you got into it to a certain extent, merely to show bias or prejudice, if any.

Mr. Kennedy. Your Honor, I would like to state, if I may, that the *only purpose of injecting this issue at all is in connection with the argument about the exhaustion of remedies. We don't contend in anyway, what the labor Board did, reflects on the merits or lack of merits of this charge, of Mr. Gonzales' case, and we are not offering it for that purpose at all,* but the section does contain

> references to certain sections of the Labor Act which the Court could take judicial notice of, and I thought as a matter of convenience we could have these sections before the Court by having this formal document introduced in evidence.
>
> The Court. Well, if there are any sections in the Labor Relations Act that you think the Court ought to take judicial notice of, just call them to my attention. I have a copy of them (R. 68-69),

Petitioners ask this Court to rule that California is ousted of its jurisdiction to remedy a breach of contract on the basis of an assertion in a brief, without a jot of evidence to support it. They point to no allegation in the petition for writ of mandate or in their answer, of any unfair labor practice. They agreed at the trial that proceedings before the National Labor Relations Board were immaterial to the issues, including the issue of jurisdiction.

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2. ASSUMING AN UNFAIR LABOR PRACTICE, THE STATE COURT DID NOT OFFER TO REGULATE IT.

A. The state court could not refuse jurisdiction.

If, on the basis of petitioners' statement, it were to be assumed that petitioners did cause employers to discriminate against him to encourage union membership, there would be an unfair labor practice *in fact*. That is not to say, however, that the state court would then be ousted of jurisdiction. It dealt with an aspect of the fact-complex which was entirely governed by state law and which in no way paralleled or conflicted with the national regulation of labor disputes.

What the state court dealt with here were the rights of the respondent as a member of an unincorporated association. He asserted a cause of action under state law against the petitioners alone, and if he had any cause of action against the employers or the union under federal law, he must be held to have waived it. Does the federal control of labor relations affecting interstate commerce require that he assert it, and that unless he is to go remediless, he pursue the remedy afforded by the National Labor Relations Act? Under the cases decided by this Court, he must do so *only if the conduct regulated by the state court is the same conduct as that regulated by the federal act.*

Thus, in *Garner v. Teamsters Union,* 346 U.S. 485, 498, 499, this Court said, ". . . when two separate remedies are brought to bear on the *same activity,* a conflict is imminent." (Emphasis added). If the same activity is involved, it matters not that the state may be dealing with private rights, the federal agency with public ones. Except in the narrow field of breach of the peace or danger to the public health or safety, federal occupation of the field of prohibited or protected acts precludes state control. But when the activity regulated by state action is neither protected nor prohibited, the reason for the rule vanishes. *International Union v. Wisconsin Employment Relations Board,* 336 U.S. 245.

In this case the state was concerned with the activity of an unincorporated association in illegally ousting a member. This is a field in which the National

Labor Relations Board is powerless to act, as petitioners concede. Further, the state court did not deal at all with any act of the union which caused employers to discriminate against Gonzales.

In this respect it is quite unlike the cases relied upon by petitioners, where the conduct improperly regulated by the state court was the very conduct, in its entirety, which the Board would deal with. In *Garner v. Teamsters Union,* 346 U. S. 485, *supra,* the conduct dealt with was picketing to cause an employer to discriminate in favor of employees who became union members; in *Plankinton Packing Co. v. Wisconsin Employment Relations Board,* 338 U. S. 953, it was actively designed to coerce the employer into discharging one Stokes, who had resigned from the union; in *Guss v. Utah Labor Relations Board,* 353 U. S. 1, the union pleaded in court the same unfair labor practice it had charged before the Board. In *Weber v. Anheuser-Busch,* 348 U. S. 468, *supra,* the conduct was not wholly unequivocal in character, but it involved a strike and picketing which this Court found reasonably within the unfair labor sections of the Act or reasonably deemed to be within the protection of the Act.

In the case at bar even the petitioners did not find the case suggested exclusive jurisdiction in the Board—it was not until they were appealing from a judgment for damages[2] against them that this question was raised, to escape payment of damages. At

[2]They appealed from this part of the judgment only, and took no appeal from the writ of mandate.

the outset they did not plead lack of jurisdiction. They recognized the power of the court to reinstate respondent.

This was true with respect to the question of damages, too—petitioners raised no objection to the pleadings or to the evidence on the question of damages. The parties and the trial court all recognized that there was here a matter which the federal Act did not purport to regulate, even though there was a *possibility* that there was, in addition to the breach of contract, an unfair labor practice.

In this state of the pleadings and the evidence, the state court had no basis for suspecting federal jurisdiction or refusing to exercise its own.

B. The mere presence of an unfair labor practice does not mean exclusive federal jurisdiction.

While it is conceivable that Congress might extend its control of labor relations to all activity which constitutes any part of an unfair labor practice, it has not done so. In *International Union v. Wisconsin Employment Relations Board,* 336 U. S. 245, and in *Algoma Plywood & Veneer v. Wisconsin Employment Relations Board,* 336 U. S. 301, this Court held that state courts may act where the activity regulated, though it involves labor relations and trade unions, was neither protected nor prohibited by the National Labor Relations Act. In *United Construction Workers v. Laburnum Construction Corp.,* 347 U.S. 656, *supra,* the state court was allowed to act even though it was assumed that *an unfair labor practice was the*

very subject for which damages were awarded, because there was no compensatory relief under the federal Act and no federal administrative remedy with which the state remedy conflicted.

Petitioner argues for an extension of federal control which would have effects so far-reaching that it should not be found by implication. Suppose, for example, that an employer illegally discharged an employee for union activity, but explained the discharge by falsely stating to other employees that the man was discharged for stealing. Would that man be prohibited from suing in the state courts for slander?

If an employee attempting to enter a factory during a labor dispute is illegally beaten up by plant guards or pickets, is he prevented by the National Labor Relations Act from suing the employer or the pickets for damages for battery, including wages lost while he was laid up in the hospital?

In these hypothetical cases the state court would be dealing with part of a complex state of facts which includes an unfair labor practice. But the state would deal only with conduct which is not protected nor prohibited by the federal Act, and which is not dealt with by the federal administrative agency in a way that either conflicts with or parallels state action. Slander, in the first example, is not protected by the Act and is not *per se* prohibited. Battery is neither protected nor prohibited. An action for damages in the state court would have no parallel in any administrative remedy under the Act. Any adminis-

trative remedy available in either case would be completely unhampered by the state court actions.

So here, if an unfair labor practice is assumed, there remains an area within the fact-complex which is still governable by state law and which does not invade the area governed by the federal Act.

C. The court properly determined its jurisdiction.

There is a suggestion in *Weber v. Anheuser-Busch,* 348 U.S. 468 and in *Local 25, Brotherhood of Teamsters v. New York, New Haven and Hartford RR,* 350 U.S. 155, that the Board alone may determine whether the conduct in question is protected or prohibited by the Act. That this is not a universal rule is clear from the cases where state courts have been held empowered to make this determination. This is demonstrated, too, by the language of this Court in *Weber v. Anheuser-Busch, supra,* where the requirement that the state court initially decline jurisdiction is put upon certain factors: Pleading of an unfair labor practice; a state of facts which "reasonably bring the controversy within the sections prohibiting these practices"; conduct which if not prohibited, may be reasonably deemed to come within the protection of the act.

In this case no unfair labor practice was pleaded by either side, the allegations and evidence were of facts which arose in the illegal expulsion of a union member (over which the Board has no control), and nobody can suppose that the Act protects the deprivation by a union of its members' rights to a fair trial within the organization.

In the absence of any of these indicia of exclusive federal jurisdiction no state court can be required to refuse to hear the litigants who come before it. If the plaintiff does not reveal the factors which mean federal jurisdiction, the defendant certainly can. Where neither side does so, the intelligent and efficient exercise of the states' judicial power requires state courts to adjudicate the rights and liabilities of the litigants under state law.

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3. THE STATE COURT HAD JURISDICTION TO AFFORD COMPLETE RELIEF.

It is axiomatic that equity will afford complete relief, including damages where appropriate, to avoid a multiplicity of suits. Petitioners assert that although the court below was the only one which could order respondent's reinstatement in the lodges, he must go to another tribunal to seek damages for lost wages, and his right under state law to damages for humiliation he must forego altogether.

Petitioners and respondents agree that the federal administrative agency cannot award any relief for respondent's wrongful expulsion from the petitioning lodges. Nor is there any disagreement that the Board cannot award damages for humiliation and mental suffering. The petitioners' position then boils down to this: No court can afford complete relief. The Board can grant some relief, the state courts other relief, but no unitary judgment can be had for all the wrong committed.

The policy of equity to award complete relief is ancient and strongly held (see *Oelrichs v. Spain,* 15 Wall. 211, 21 L. Ed. 43, Pomeroy, Equity, 5th Ed., pp. 459-616). It makes obvious sense in the administration of justice. To refuse enforcement of the rule in cases like the one at bar would be to deny the lessons of centuries of experience and volumes of legal history.

Congress has not provided nor this Court held, so far as respondent can discover, that where there is an administrative procedure which will provide a *partial* remedy for a wrong suffered by a worker employed in interstate commerce, and a judicial remedy which will afford *complete* relief, the latter must give way to the former. On the contrary, this Court has recently held, in *Syres v. International Oil Workers Union,* 350 U.S. 892, that the federal courts have jurisdiction to enjoin the enforcement of a discriminatory collective bargaining contract even though its enforcement violated the National Labor Relations Act, and a partial remedy was available under that Act.

In that case the petitioners sought relief from a collective bargaining contract which discriminated against them on the basis of race. When their representatives, certified by the Board, negotiated a discriminatory contract, they sought an injunction against its enforcement, for a declaration that it was void, and for damages. Their argument was that the National Labor Relations Act, like the Railway Labor Act (*Brotherhood of Trainmen v. Howard,* 343 U.S.

768) required labor representatives to bargain with equal fairness for all. (For facts, see same case at 223 Fed. 2d 739). It was argued below (see dissenting opinion of Judge Rives, 223 Fed. 2d at 747) that they could petition the Board for a separate bargaining unit of their own, or for decertification of their bargaining representatives. As Judge Rives points out, these remedies would be wholly inadequate to effect complete relief. The Court of Appeals held that there was no jurisdiction in the federal court because the interpretation of the National Labor Relations Act was not involved. This Court reversed, citing *Steele v. Louisville & N. R. Co.*, 323 U.S. 192; *Tunstall v. Brotherhood*, 323 U.S. 210; and *Brotherhood of Trainmen v. Howard*, 343 U.S. 768, *supra*. The case has been remanded to the District Court for further proceedings.

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4. THE STATE COURT'S DECREE DOES NOT CONTRAVENE FEDERAL POLICY.

If it is assumed that there was an unfair labor practice in fact committed by petitioners here, the state court has acted in a field in which the Labor Board could exercise its jurisdiction if it would. If the state court is to be held without jurisdiction to do so, there must be a rationale which requires that rule.

This Court has explained the rationale for the rule where it applies:

> "Congress evidently considered that centralized administration of specially designed procedures

> was necessary to obtain uniform application of its substantive rules and to avoid those diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner v. Teamsters Union,* 346 U.S. 485, 490-491, *supra.*

When that rationale is applied to the case at bar, none of the evils it seeks to avoid is found. The primary purpose is to avoid diversities in the application of Congress' substantive rules. But Congress has specifically excepted from the scope of the federal Act the conduct which this decree redresses—expulsion from membership in a trade union. This is clear from the proviso of §8 (b) (1)(A), "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership." Where state action deals with the area exempted from federal control there can be no conflict between the two jurisdictions.

The decree of the state court is narrowly drawn to deal only with the area of proper state control. It commands petitioners

> ". . . to restore to Marcos Gonzales . . . forthwith, all of his rights and privileges in the said International Association of Machinists and . . . Local Lodge No. 68, and reinstate said petitioner as a member in good standing thereof without payment of any fine or the statement of any apology to . . . Truax or to any other person."

So much, presumably, petitioners would concede. They argue that the state court did more than that here—it also awarded damages, which is within the federal area because the damages redress discrimination in employment. In reply to this it should first be pointed out that under California law as interpreted by its courts, the damages were awarded for petitioners' illegal denial to respondent of those rights which union membership gave to him: Dispatch from the hiring hall, assistance in obtaining employment, relative freedom from economic worry, the right to the prestige which his work in the association had won for Gonzales. The judgment of the court itself makes clear that this is the source of the loss to Gonzales which the court redresses:

> "It is further ordered that this Court retains continuing jurisdiction of this cause for the purpose of awarding additional damages or making further orders herein until this judgment and *the said peremptory writ of mandate shall have been fully complied with.*" (R. 30).

The writ of mandate is quoted above—it dealt with restoration to membership and with that alone.

Petitioners argue that no matter what the label the court gave its action, it was awarding damages for discrimination in employment. If so, the ordinary process of appeal in the California courts would surely have sufficed to remedy this, for the record is barren of any evidence to support an award on that basis. Petitioners did in fact argue that there was no evidence to support the award of damages. The California court rejected that argument:

"Appellants contend that there is no evidence to support the award of $6,800 damages for loss of wages. . . . There was ample evidence to support the award." (R. 131-132).

Further, petitioners argue that the state court has here seized on the power to award damages, both for wage loss and mental distress, as a handle by which to grapple with the unfair labor practice and evade the preemption of that field by the Federal Government. They read *Amalgamated Meat Cutters v. Fairlawn Markets, Inc.*, 353 U.S. 20, as holding that the power to enjoin trespassing does not give a state court power to control union conduct in violation of the federal Act. What this Court actually said in that case was that the question of state control of a state matter (trespass) was not before the court, for there the state court had attempted to "reach the union's conduct in its entirety" (353 U.S. at 20).

Here the state court did not undertake to control any unfair labor practice by petitioner. It did not seek to enjoin any act by the union which "caused or attempted to cause" employers to discriminate. It did not even receive or consider any evidence of such activity.

In *Garner, supra,* this Court pointed out that a variety of procedures applied to federally controlled conduct could result in conflicting adjudications. Petitioners point to the difference between an award of back pay by the Labor Board and an award of damages for lost earnings by the California court. They say this is an example of the conflict. But the differ-

ences speak with at least equal eloquence of the differences between what the Board does when it awards back pay, and what the court was doing here in awarding damages for breach of contract.

The Board, acting to effectuate the purposes of the federal Act, has found that the common-law rule is ineffectual to accomplish that purpose. *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U. S. 344. The court below was acting to remedy a breach of contract. It found the rule adequate for its purpose.

The mere coincidence in part of the measure used by both tribunals—loss of wages—does not obliterate the essential differences between the two awards as to authority to make them, method of calculation, the evidence necessary to support them, the pleadings necessary to make them appropriate, and the conduct they are designed to affect.

Petitioners argue that the award of damages for humiliation does not take the case out of the Act. The fact that the state court awarded damages for mental distress does not, it is true, provide authority to make such an award. Jurisdiction is not based upon the judgment, but the judgment upon jurisdiction. The significance of this part of the judgment below is not that it takes the case out of the federal area, but that it demonstrates that the case was never in that area.

While an unfair labor practice may produce mental distress, such distress has never been considered compensable. The statute empowers the Board to reinstate "with or without back pay", but says noth-

ing about an award of damages for mental distress. The Board is carrying out its administrative function in the area of labor relations. It has found certain remedies effective in so doing. Its primary concern is with labor relations, not remedies.

The court, however, is not seeking to regulate labor relations or prevent unfair labor practices but to award compensation for losses resulting from a breach of contract. Such damages are awarded under its law for breach of the contract between an unincorporated association and its members. *Taylor v. National Union of Marine Cooks and Stewards*, 117 Cal. App. 2d 556. There is no conflict between the Board and the court. If their aim is true, two marksmen shooting at different targets do not hit the same bullseye.

Petitioners beg the question when they suppose (Br. pp. 16-17) a suit by a discriminatorily discharged employee, claiming mental distress, against his employer. They put the case in the area of labor relations, which is the Board's area. Further, they suppose an unfair labor practice as the basis for the suit. A litigant who pleaded his case in this fashion would plead himself right out of court.

It is not respondent who suggests that the power to award damages for mental distress is the power to regulate unfair labor practices. That is a straw man set up by the petitioners. Respondent says that the award of such damages is without probative force in the attempt to show that the court here was trying to enter the federal area.

The question raised by the case at bar is not one of remedies but of conduct. In this case, did the state court, pretending to award damages for breach of contract, in reality attempt to regulate an unfair labor practice?

This question really takes us to the heart of the argument that the state court judgment in this case will bring about incompatible or conflicting adjudications on questions of the substantive rules enacted by Congress. If the state court judgment can be cited to support state court adjudications of unfair labor practices, then petitioners are right. But the state court judgment is clearly based on recognition of the difference between adjudicating an unfair labor practice and adjudicating a breach of contract:

> "No charge of 'unfair labor practices' appears in the petition. The answer to the petition denied its allegations and challenged the jurisdiction of the court, but said nothing about unfair labor practices. The evidence showed that plaintiff, because of his loss of membership, was unable to obtain employment, and was thereby damaged. However, this damage was not charged nor treated as the result of an unfair labor practice but as the result of the breach of contract. Thus the question of unfair labor practice was not raised nor was any finding on the subject requested of, or made by, the court." (Opinion below, R. 127).

Thus, this is not one of those cases in which the state court, in the guise of regulating illegal combinations in restraint of trade (as in *Weber v. Anheuser-Busch,* 348 U.S. 468, *supra*) or trespass on

real property (*Amalgamated Meat Cutters v. Fairlawn Meats*, 353 U.S. 20, *supra*) or some other phase of state power, actually regulated conduct within the exclusive purview of the Board.

CONCLUSION.

Where the state court does not purport to deal with an unfair labor practice; where there is no evidence of an unfair labor practice; where the conduct regulated by the state was left to the states by Congress; where the state decision cannot be taken as authority for any future attempt to regulate an unfair labor practice, the state court decision does not invade the area exclusively reserved to the federal agency. It deals exclusively with illegal expulsion from a trade union.

The decision of the court below should be affirmed.

Dated, San Francisco, California,
October 28, 1957.

Respectfully submitted,
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(Appendix A Follows.)